

United States Government
MEMORANDUM

**Office of
Personnel Management**

Subject: Reduction in Force in the Senior Executive Service

NOV 5 1979
Date:
In Reply Refer To:

From: Sally H. Greenberg, Associate Director
Executive Personnel Management and Development

Your Reference:
XEA

To: Directors of Personnel

We have prepared draft interim regulations covering RIF within the SES. Attachment 1 is a background paper, Attachment 2 contains the draft regulations, and Attachment 3 contains a section analysis of the regulations.

We are interested in receiving your comments and suggestions on the proposed RIF system. In particular, we would like input on the kinds of situations which would require the use of RIF procedures, and on the factors which should be used to determine competitive areas and competitive fields (similar to competitive levels under part 351) and to rank order executives on the retention register. Also note that in the draft regulations, for some sections alternative regulations are provided; and we would like to have your comments on whether you prefer the alternative and why.

Please let us have your comments within two weeks. If you have any questions, please call Neal Harwood (632-4695) or Jack Vincent (632-6820).

Attachments

BACKGROUND PAPER

PROPOSED INTERIM REGULATIONS ON REDUCTION IN FORCE IN THE SENIOR EXECUTIVE SERVICE

I. Introduction

The CSRA of 1978 exempts members of the SES from coverage under the Retention provisions of chapter 35 of title 5, and as a result OPM regulations have been revised to exclude positions in the SES from coverage under part 351. See section 351.201(g). The CSRA adds a new subchapter V in chapter 35, titled Removal, Reinstatement, and Guaranteed Placement in the Senior Executive Service. The new subchapter V, however, deals only with removal from the SES for less than fully successful performance and during probation. It does not deal with reduction in force. Thus there is currently nothing in law or regulation covering RIF in the SES. Nevertheless, some of the same kinds of circumstances which affect employees outside the SES may also affect members of the SES.

II. Situations Leading to Reduction in Force in the SES

The CSRA of 1978 contemplated little need for RIF in the SES. The CSRA's requirement for biennial planning of executive staffing needs, the creation of the SES as an ungraded service, and the emphasis on executive mobility within and across agency lines all indicate that the necessity to resort to RIF in the SES should be rare and result primarily from unforeseen events beyond the control of agency management.

RIF is traditionally caused in the government by lack of work or funds, reorganization (management adds to, takes from, or redistributes the functions or duties of one or more positions), transfer or abolishment of functions, or the need to make room for the reemployment or restoration of an employee. Executives in the SES usually will be affected in different ways and to a lesser degree by these circumstances than employees at lower echelons. For example, because an executive generally has responsibility for a relatively large segment of the organization and the executive's position has been justified on the basis of a careful biennial projection of program and executive staffing needs, it should be a rare occurrence when executives have to be released from the SES because of lack of work or funds.

Reorganization should also rarely affect senior executives. Since the SES is an ungraded system, there should be relatively few RIF's caused by the restructuring of positions. The executive generally will be able to be placed in the restructured position, even if it has lost duties or responsibilities, or reassigned to another SES position for which qualified. Need for RIF would occur, however, if the position no longer meets the criteria for placement in the SES and the incumbent is not qualified for reassignment to another SES position or none is vacant.

Reorganization can also lead to a situation where an SES position in one part of the organization is abolished and a new SES position is established in another part of the organization, e.g., because of higher priority needs in the second organization. This situation would not entail a reduction in the overall number of authorized SES positions. RIF would be appropriate only if the affected executive could not be reassigned to the new position or another SES vacancy, or if a new SES position could not be established to accommodate the executive.

Transfer of function, accompanied by a reduction in the overall number of SES positions in the competitive area, would be a legitimate cause for using RIF procedures, as would the abolishment of a function, assuming affected executives could not be placed elsewhere within the SES in the agency.

There also may be rare instances when a RIF is necessary because of the restoration or reemployment of a former SES career appointee e.g., an appointee who took a Presidential appointment and has reinstatement rights under 5 U.S.C. 3593(b). OPM contemplates, however, that these cases will normally be handled by reassignment or voluntary transfer of employees within the SES, or by the temporary allocation of an additional SES space by OPM.

There is the additional possibility that OPM action may lead to a RIF. The CSRA authorizes OPM, on its own initiative, to make an adjustment in the number of SES positions authorized for any agency. Such action by OPM might make it necessary for an agency to resort to RIF if all current executives could not be accommodated within the new quota. Normally, however, any reduction in current executives caused by a new quota would be handled by attrition.

III. Agency Actions Prior to RIF

FPM Chapter 351 urges that an agency do everything possible to reduce the adverse impact of a RIF on its employees. The same principle applies and is emphasized for RIF in the SES.

The actions which an agency needs to take prior to RIF are listed below:

- (1) An agency should make every effort to reassign career incumbents to vacant SES positions, either career reserved or general, for which the executives meet qualification requirements. In line with the flexibilities built into the SES system, an agency should explore the possibility of a series of reassignments to accommodate all of its executives. (The agency must comply, of course, with restrictions in law on the reassignment of career SES appointees, e.g., those in 5 U.S.C. 3395.)

Waiver of qualifications, however, as permitted in part 351, is not a feature of RIF in SES. Executive positions are too critical to the accomplishment of an agency's mission to permit the placement of less than qualified incumbents in the positions. Requiring executives to meet qualification requirements should not significantly hinder placements since under SES these requirements are anticipated to be broader than they were previously.

- (2) If an existing SES vacancy is not available, the agency should determine whether it is possible to restructure jobs to create one.
- (3) With an executive's approval, the executive may be assigned to a vacant non-SES supergrade or equivalent position in the agency.
- (4) If an agency cannot accommodate all of its executives, it must inform OPM as early as possible, but no later than the date RIF notices are issued. OPM will assist in making known the surplus and facilitating placement of the individuals with other agencies having executive vacancies. Any transfer must be mutually acceptable to the executive and the gaining agency.
- (5) If the agency is undergoing a major RIF, reorganization, or transfer of function, it may apply to OPM for such a designation. If the designation is approved, the agency may offer voluntary early retirement.
- (6) If an employee faces involuntary separation from his or her position as of some specific date as the result of such factors as abolishment of the position or transfer of function outside the commuting area, the employee may be eligible for discontinued service retirement under the conditions specified in subchapter S11 of FPM Supplement 831-1.
- (7) If the above steps do not accommodate all affected executives, the agency may then institute a formal RIF, which shall be carried out in accordance with OPM regulations.

IV. RIF Procedures

A. Among the characteristics of the SES that need to be taken into account in establishing RIF procedures are the following:

- (1) In general, the CSRA emphasizes performance as a basis for all types of personnel decisions. Specifically, the Act states (5 U.S.C. 3131) that the SES shall be administered so as to "ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance." The Act clearly indicates that the performance appraisal system in SES applies not only to career, but also to noncareer and limited appointees. It logically follows that performance should be an important consideration in deciding who will be released from the SES in a RIF.
- (2) Although the SES system has many rank-in-person features (e.g., in the setting of pay rates), it still has certain position oriented features, including the requirement that all SES members must meet the qualification standards for positions to which they are appointed.
- (3) General positions may be occupied by career, noncareer, and limited appointees.
- (4) Veterans preference is not a consideration in the SES, per Sec 2(a)(8) of PL 96-54, August 14, 1979 (Sec 2108(3) of title 5).
- (5) SES space allocations are to be adjusted based on relative agency needs.
- (6) SES is to be a flexible personnel system with increased emphasis on mobility.
- (7) It was indicated to executives during the conversion process that RIF in the SES would be rare.
- (8) Career executives removed from SES because of performance have guaranteed placement rights at GS-15. It seems equitable that career executives removed involuntarily and without personal fault should have similar rights to the extent practical and permitted by law.

B. In view of the above characteristics, the key elements in the proposed SES procedures are the following:

- (1) A competitive area should be large enough to permit adequate competition among employees. At a minimum, it must include all SES positions in a commuting area, even if they are in different bureaus or commands.

(Part 351 allows an agency to limit a competitive area to major sub-organizations, even if within the same commuting area. SES regulations approach positions on an agency-wide basis.)

- (2) Competitive fields, which are comparable to competitive levels under Part 351, are to include similar jobs (in terms of qualification requirements, duties, and responsibilities) where movement of incumbents would not cause undue interruption of work. Positions occupied by limited appointees must be in their own competitive field. General and career reserved positions must be in separate competitive fields since noncareer appointees in general positions may not be moved to career reserved positions.
- (3) Retention groups within a competitive field are based on current SES performance ratings. Within each group, career appointees are placed in a higher subgroup than noncareer appointees to recognize their greater tenure rights.
- (4) Standing on the register within a retention group for career appointees is based on a combination of years of civilian service (SES service gets double credit), performance ratings (points subtracted for previous minimally satisfactory or unsatisfactory ratings), and honorary ranks (points added for ranks within the last five years). There is a limitation on how much service can be credited.

Noncareer appointees may be placed in their subgroup in any order desired by the agency.
- (5) There is provision for mandatory placement of career appointees in any SES vacancy in the agency for which the appointee is qualified. There are no bumping or retreat rights within the SES, however. Noncareer and limited appointees have no placement rights when released from their competitive fields.
- (6) If a career appointee is removed from SES, the appointee has an appeal right to the MSPB and is guaranteed placement in GS-15, with any further RIF action (e.g., if there is now a surplus of GS-15 employees) taking place under part 351 procedures.
- (7) A career executive removed from SES has the right during the next two years to be placed in any SES vacancy for which qualified in the agency.
- (8) For each executive removed from the SES by RIF, the agency must return an SES space to OPM; and the agency's allocation is reduced accordingly. If because of changing priorities the agency believes it can justify use of the space elsewhere, however, it can request OPM to return the space to the agency.

SUBPART X - Reduction in Force in the Senior Executive Service

3xx.101 General provisions.

- (a) This subpart covers release of an appointee in the Senior Executive Service from a competitive field, as described in section 3xx.102(b), if the release is required because of lack of work, shortage of funds, reorganization, determination that the appointee's position no longer meets the definition for a Senior Executive Service position in 5 U.S.C. 3132(a)(2) because of a change in duties or responsibilities, the exercise of reemployment or restoration rights, or the withdrawal of Senior Executive Service spaces by the Office of Personnel Management.
- (b) Each agency shall follow all the provisions of this subpart unless the Office of Personnel Management has approved different provisions for the agency.
- (c) This subpart does not apply to a career appointee in the Senior Executive Service who is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch and who elects to continue Senior Executive Service pay and benefits under 5 U.S.C. 3392(c) when the appointee leaves the Presidential appointment.

3xx.102 Scope of competition.

- (a) Each agency shall establish competitive areas in which appointees compete for retention under this subpart. At a minimum, a competitive area must include all Senior Executive positions in the agency in the local commuting area.

[Alternative: The competitive area in which appointees compete for retention under this subpart shall include all Senior Executive Service positions in the agency, unless the Office of Personnel Management approves a smaller area.]

- (b) Each agency shall establish competitive fields within its competitive areas. These fields shall consist of all positions which are sufficiently alike in qualification requirements, duties, and responsibilities so that the agency normally may assign the incumbent of any one position to any of the other positions without unduly interrupting the work program and with the expectation that the appointee will be able to perform in a fully successful manner. Each agency shall establish separate competitive fields for career reserved and general positions, and for positions filled under limited emergency and limited term appointment authorities.

[Alternatives;

- (1) Provide that limited appointees are not subject to this subpart and may be removed in any order.
- (2) Provide that career and noncareer appointees are to be placed in separate competitive fields. Rely on percentage restrictions in law to assure that RIF's don't just affect career appointees.]

3xx.103 Retention standing.

- (a) Prior to a reduction in force, each agency shall place competing appointees on a retention register in the following groups on the basis of their current performance ratings within the Senior Executive Service. The current performance rating is the rating of record on the date the reduction-in-force notices will be issued.

- (1) Group I. Appointees with a current performance rating above the first level of fully successful, when such a level exists.

- (2) Group II. Appointees with a current performance rating at the first level of fully successful.
- (3) Group III. Appointees with a current performance rating of minimally satisfactory.
- (4) Group IV. Appointees with a current performance rating of unsatisfactory.

Until an appointee receives his or her first performance rating within the Senior Executive Service, the employee shall be placed in Group II.

[Possible addition: For the period from July 13, 1979, to the agency's first Senior Executive Service performance ratings, however, the agency may provide that any appointee with a current performance rating above satisfactory under part 430 in a position that went into the Senior Executive Service shall be placed in Group I.]

- (b) Within each group containing career and noncareer appointees, there shall be a subgroup A consisting of all career appointees and a subgroup B consisting of all noncareer appointees.

[Alternatives:

- (1) Have each level of fully successful a separate group, followed by groups for minimally satisfactory and unsatisfactory. A possible problem here is that some agencies may have a different number of fully successful levels in different components of the agency.
- (2) Have only 3 groups: I - Fully Successful, II- Minimally Satisfactory, and III - Unsatisfactory. Divide each group into A - Career and B - Noncareer. Further subdivide I - A and I-B into 1 - Above 1st level fully successful and 2 - At 1st level fully successful. This system would assure that all career appointees with a fully successful rating would be retained above noncareer appointees with such a rating.]

(c) Each agency shall establish a career appointee's relative standing on the retention register within a subgroup as stated below. Noncareer appointees need not be rank ordered within a subgroup.

- (1) Credit one point for each full year of Federal civilian service outside the Senior Executive Service, and two points for each full year of service within the Senior Executive Service (or a comparable Federal executive personnel system as determined by the Office of Personnel Management), for a maximum of twenty points. An individual who was appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch and elected to continue Senior Executive Service pay and benefits under 5 U.S.C. 3392(c) shall have time spent under that appointment credited as time in the Senior Executive Service.

[Alternative: Allow maximum of thirty points to reduce chance of ties.]

- (2) Add ten points for the award of the rank of Distinguished Executive, or five points for the award of the rank of Meritorious Executive, within the last five years, with a maximum of ten points.
- (3) In groups I and II, subtract ten points for an unsatisfactory rating in the Senior Executive Service within the last five years, or five points for a minimally satisfactory rating in the Senior Executive Service within the last three years.

[Alternative: Require agencies to use the groups and subgroups established in (a) and (b). But since there are numerous ways to rank order employees within a subgroup, allow agencies to adopt their own ranking procedures if they want in lieu of the procedures in (c). Otherwise those procedures will be applicable.]

3xx.104 Release from competitive field.

- (a) Each agency shall select appointees for release from a competitive field in the inverse order of retention standing, beginning with the appointee in the lowest subgroup with the lowest standing on the retention register. When appointees in the same retention group or subgroup are tied for release from a competitive field, the agency may select any tied appointee for release.
- (b) When an agency will abolish all positions in a competitive area within three months, it shall release appointees in subgroup order, but may release them regardless of retention standing within a subgroup. If an agency releases an appointee under this paragraph, the notice to the appointee shall so state and also shall give the date the abolishment will be completed.

- (c) The following exceptions apply to the selection sequence in paragraph (a) of this section:

- (1) An agency may make a permanent exception to the selection sequence when needed:
 - (i) To retain an appointee on duties that cannot be taken over within 90 days and without undue interruption to the activity by an appointee with higher retention standing, or
 - (ii) To release a noncareer appointee when such release is required by a reduction in the noncareer allocation given the agency by the Office of Personnel Management.
- (2) An agency may make a temporary exception for not more than 90 days to the selection sequence when needed:
 - (i) To retain an appointee to continue an activity without undue interruption for that period,
 - (ii) To satisfy a Government obligation to the retained appointee, or
 - (iii) When the temporary retention of the lower standing appointee does not adversely affect the rights of any higher-standing appointee who is released ahead of him or her.

The temporary retention of a lower-standing appointee on sick leave as a permissive exception may exceed 90 days, but may not exceed the date of exhaustion of the sick leave.

- (3) There shall be appropriate documentation on the record for the exception. The agency shall notify in writing each higher-standing appointee reached for release from the competitive field of the reasons for the exception.

3xx.105 Placement rights.

- (a) A career appointee, other than one in Group IV, released from a competitive field is entitled to be placed in any vacant Senior Executive Service position in the agency for which the appointee meets the qualification requirements. A released appointee does not have a right to displace any other Senior Executive Service appointee.

[Alternative: Provide that a limited appointee may be displaced by a career appointee.]

- (b) A career appointee who cannot be placed in a vacant position in the Senior Executive Service following release from a competitive field, or a position at GS-16, 17, or 18 or the equivalent, on a voluntary basis, is entitled to be placed in the employing agency in a continuing position at GS-15, or the equivalent, unless the agency is due to be abolished within three months. If this action would cause the separation or demotion of another employee, however, the individual coming from the Senior Executive Service shall be subject to the reduction-in-force regulations in part 351 to determine to what, if any, position the appointee is entitled.

[Alternative: Provide that an employee RIF'd from SES will have guaranteed placement rights at GS-15, and any necessary RIF at that level resulting from a surplus of employees would involve former GS-15's only. A possible problem with this alternative is that such a guarantee is not provided in law, and it may be necessary for all employees to compete under part 351 procedures.]

- (c) A career appointee, other than one in Group IV, who is removed from the Senior Executive Service under this subpart is entitled for a two-year period after removal to be placed in any Senior Executive Service vacancy in the agency for which qualified and in which the appointee can be expected to perform in a fully successful manner.

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- (d) A noncareer or limited appointed released from a competitive field does not have any placement rights.

3xx.106 Transfer of function.

- (a) "Transfer of function" means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, or the movement of the competitive area in which the function is performed to another commuting area.
- (b) Before a reduction in force is made in connection with the transfer of any or all of the functions of an agency to another continuing agency, each appointee in a position identified with the function or functions shall be transferred to the continuing agency without change in tenure.

An appointee whose position is transferred solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days, is not a competing appointee for other positions in the receiving agency.

3xx.107 Notice.

- (a) Each appointee selected for release from a competitive field is entitled to a specific written notice at least 30 full days before the effective date of the release.
- (b) The notice shall state the action to be taken and its effective date; the appointee's competitive area, competitive field, and retention group; the number of retention points assigned the appointee; the place where the appointee may inspect the regulations^{and} records pertinent to the case; the appointee's appeal rights, including the time limit for appeal and the location of the Merit Systems Protection Board office to which an appeal should be sent; and any placement rights under section 3xx.105(c) following removal from the Senior Executive Service.

- (c) An appointee is entitled to a new written notice of at least 30 full days if the agency decides to take an action more severe than first specified.

3xx.108 Notification of the Office of Personnel Management.

An agency must inform the Office of Personnel Management at the time of issuance of any specific reduction-in-force notice. The information is to include the position(s) which will be abolished, how placement of any affected executives was attempted, and whether the executives would like to have the Office determine whether there are SES positions in other agencies in which they could be placed.

3xx.109 Appeals.

- (a) A career appointee who has received a specific RIF notice removing the appointee from the Senior Executive Service and who believes that this subpart has not been correctly applied may appeal to the Merit Systems Protection Board under procedures established by the Board.
- (b) An appeal shall (1) be in writing, (2) identify the appellant, the agency, and the nature and effective date of the action appealed, and (3) state why the appellant believes the action appealed is improper.
- (c) Noncareer and limited appointees do not have an appeal right to the Merit Systems Protection Board.

3xx.110 Allocation of Senior Executive Service spaces.

If an appointee is removed from the Senior Executive Service under this subpart, the agency shall return to the Office of Personnel Management the position occupied by the appointee; and the agency's space allocation shall be reduced accordingly.

3xx.111 Grade and pay retention.

If an appointee is removed from the Senior Executive Service under this subpart, the appointee is entitled to grade and pay retention in accord with the provisions in subpart B of part 536.

3xx.112 Records

Each agency shall maintain current records needed to determine the retention standing of its competing appointees. The agency shall allow the inspection of its retention registers and related records by an appointee to the extent that they have a bearing on the appointee's case. The agency shall preserve intact all registers and records relating to a reduction-in-force for at least two years from the effective date of the reduction-in-force action, or until an Office evaluation, whichever is first.

SECTION ANALYSIS

3xx.101(a) - These are essentially the same criteria as in section 351.201(a) for non-SES RIF, with the addition of the criterion of withdrawal of SES spaces from an agency.

~~3xx.101(b) - An agency may adopt its own SES RIF procedures, but only~~
if it obtains prior OPM approval.

3xx.101(c) - Release of a Presidential appointee who has elected to keep SES benefits under the Presidential appointment is not covered by the subpart; the individual has reinstatement rights to the SES under 5 U.S.C. 3593(b). (If there is a surplus of SES employees following reinstatement, RIF may be necessary then.) Also, while on the Presidential appointment the individual does not compete with other employees during an SES reduction in force.

3xx.102(a) - Non-SES RIF in section 351.402(b) allows an agency to set up different competitive areas for different bureaus in the same commuting area. Because SES is an agency-wide system, the SES regulations provide that the competitive area must include all agency SES positions within the commuting area.

3xx.102(b) - The term "competitive field" is used instead of "competitive level" to emphasize that organizational level and SES pay rates are not be considered in grouping competing employees. Criteria for a competitive field are essentially the same as those in section 351.403(a) for a competitive level in a non-SES RIF. It is anticipated, however, that qualification requirements in the SES will be broader than for non-SES jobs.

competitive and excepted positions. Since a noncareer appointee and a career appointee may both hold General positions, including identical positions (e.g., an agency could fill half its regional director positions with career appointees and half with noncareer appointees), SES regulations do not require separate competitive fields for career and noncareer appointees. Since a noncareer appointee may not be placed in a career reserved position, career reserved and general positions are required to be in separate competitive fields. Limited appointees are required to be in separate competitive fields because of the time limitation on their appointments. Limited term appointees would be in fields separate from limited emergency appointees.

3xx.103(a) - In keeping with the emphasis on performance for retention in SES, retention groups have been established on the basis of current performance ratings, rather than on the type of appointment as is done for non-SES RIF in section 351.501(a). Any employee who has received two unsatisfactory ratings in the last five years or two less than fully successful ratings in the last three years is not a competing employee in the RIF and must be removed from the SES prior to the removal of any other employee.

3xx.103(b) - Career executives are placed in a higher subgroup to recognize their greater retention rights.

3xx.103(c) - Regulations set up a procedure to rank order career employees within a retention subgroup. Neither the Executive Assignment System nor a PL 313-type system would be "a comparable Federal executive personnel system" for purposes of this section.

In keeping with the provision in law that noncareer appointees serve at the pleasure of the appointing authority, there is no requirement that such appointees be rank ordered within a subgroup.

- 3xx.104(a) - This paragraph is essentially the same as section 351.602 in that employees are released from competitive fields in inverse order of retention standing.
- 3xx.104(b) - This paragraph is essentially the same as section 351.605.
- 3xx.104(c) - This paragraph is essentially the same as sections 351.607 and 608. Subparagraph (1)(ii) is added to take care of situations where an agency has to reduce the number of noncareer appointees because of a reduction in the noncareer allocation by OPM.
- 3xx.105(a) - Placement rights are only provided career appointees who do not have a current unsatisfactory performance rating. Because of the importance of each SES position to agency mission accomplishment, the regulations do not permit the agency to waive qualification requirements. To provide for the greatest stability possible during a RIF, no bumping or retreat is permitted following release from a competitive field. If two or more released employees are qualified for the same vacancy, the agency has the option of which employee to place in the vacancy.
- 3xx.105(b) - Under the CSRA a career employee removed from SES for poor performance is entitled to guaranteed placement at GS-15. It is appropriate that an employee removed for reasons other than performance, or misconduct, should have similar rights. The CSRA provides that if employees are removed for performance it cannot lead to RIF at GS-15 when they are placed. This may not be practical, however, when the placement of a former SES member at GS-15 is due to a RIF situation since there may be no GS-15 vacancies. Therefore, the regulations provide that if a further RIF is required at the GS-15 level, part 351 procedures, including veterans preference provisions, are applicable. The regulations also provide that if all positions in the agency are due to be abolished within three months, the agency does not have to place the employee at GS-15, but may release the employee from the Civil Service.

3xx.105(c) - This paragraph provides for placement of a removed career executive in any SES vacancy for which qualified in the agency following RIF for two years. Among other things, the provision is intended to assure that an agency does not abolish vacancies prior to RIF just so it does not have to place employees under 3xx.105(a). Even if the employee is not placed in the SES during the two-year period, the employee would still have reinstatement rights in the SES after that period.

3xx.105(d) - Once a noncareer or limited appointee is released from a competitive field, the agency has the option of placing the appointee in another SES position, or a position outside the SES, or separating the appointee from the government.

3xx.106(a) - This paragraph adopts the definition of "transfer of function" in section 351.203(i).

3xx.106(b) - This paragraph is essentially the same as section 351.301.

3xx.107(a) - This paragraph is essentially the same as section 351.801(a).

3xx.107(b) - This paragraph is essentially the same as section 351.802.

3xx.108 - This section requires agencies to notify OPM of impending RIF actions so that OPM will have the opportunity to broker affected executives with other agencies.

3xx.109(a) - This paragraph provides for an appeal right to the MSPB for SES career appointees who are removed from the SES. Since an agency has authority to reassign employees within the SES, no appeal right is given when a RIF action does not involve removal.

3xx.109(b) - This paragraph is essentially the same as section 351.901(c).

3xx.109(c) - This paragraph makes clear that noncareer and limited appointees do not have appeal rights.

3xx.110 - This section requires an agency to return to OPM an SES space if it cannot place within SES an employee released from a competitive field. Among other things, the provision is intended to encourage agencies to make every effort possible to place affected executives within the SES. If because of changing priorities an agency believes it can justify use of the space elsewhere, it can request OPM to return the space to the agency.

3xx.111 - This section cross references regulations in subpart B of part 536 providing grade and pay retention for individuals removed from SES under RIF procedures.

Note that the grade retention is a constructed grade in the General Schedule. The employee is no longer considered to be part of SES and is not charged against an SES space. Further information is in Bulletin 536-1.

3xx.112 - This paragraph is essentially the same as section 351.505 for non-SES RIF.